DEPARTM

[Docket No. FR-6436-N-01]

Changes to the Methodology Used for Calculating Section 8 Income Limits under the United States Housing Act of 1937

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The United States Housing Act of 1937 provides for assisted housing for ''low-income families'' and ''very low-income families.'' These designations are defined as percentages of area median family income and are known as income limits. Since FY 2010, HUD has limited the increase from year to year in its income limits as the higher of five percent or twice the percentage change in national median family income. This notice adds an express stipulation that the annual income limit increase may never exceed ten percent. HUD further clarifies the definition of national median family income for purposes of setting income limits.

DATES: Comment Due Date: **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: HUD invites interested persons to submit comments on this notice. Communications must refer to the above docket number and title.

There are two methods for submitting public comments.

1. *Submission of Comments by Mail*. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. *Electronic Submission of Comments*. Interested persons may submit comments electronically through the Federal eRulemaking Portal at http://www.regulations.gov. HUD

strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the http://www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications regarding this notice submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs. Copies of all comments submitted are available for inspection and downloading at http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Questions on this notice may be addressed to Adam Bibler, Director, Program Parameters and Research Division, Office of Economic Affairs, Office of Policy Development and Research, HUD Headquarters, 451 7th Street SW, Room 8208, Washington, DC 20410, telephone number (202) 402-6057; or via email at pprd@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.

This Federal Register notice will be available electronically from the HUD User page at https://www.huduser.gov/portal/ datasets/fmr.html. Federal Register notices also are available electronically from https://www.federalregister.gov.

SUPPLEMENTARY INFORMATION

I. Background

The United States Housing Act of 1937 (the 1937 Act) provides for assisted housing for ‘‘low-income families’’ and ‘‘very low-income families.’’ Section 3(b)(2) of the 1937 Act defines "low-income families’’ and ‘‘very low-income families’’ as families whose incomes are below 80 percent and 50 percent, respectively, of the area median family income, with adjustments for family size. These income limits are referred to as ‘‘Section 8 income limits’’ because of the historical and statutory links with that program, although the same income limits are also used as eligibility criteria for several other federal programs. The 1937 Act specifies conditions under which Section 8 income limits are to be adjusted either on a designated area basis or because of family incomes or housing-cost-to-income relationships that are unusually high or low.[1] Section 8 income limits use the same area definitions as Section 8 Fair Market Rent (FMR) area definitions, which in turn are based on Office of Management and Budget (OMB) metropolitan statistical area definitions.

HUD issues updated area median family income estimates and Section 8 income limits annually. Since Fiscal Year (FY) 2010, HUD has limited the amount that the income limit for an area could increase or decrease.[2] Prior to FY 2010, income limits could not decrease at all and

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[1] The 1937 Act is codified at 42 U.S.C. 1437a.

[2] *Final Notice on Ending the ‘‘Hold Harmless’’ Policy in Calculating Section 8 Income Limits Under the United States Housing Act of 1937,* 75 FR 27564 (May 17, 2010).

there was no limitation on annual increases. Under the current methodology, HUD does not allow income limits to decrease by more than 5 percent from the prior year's level and does not allow income limits to increase by more than the higher of 5 percent or twice the change in the national median family income.

There are several reasons for these limits on increases and decreases. First, HUD's calculation of area median family income estimates is based on survey data from the Census Bureau's American Community Survey (ACS). Survey estimates of income are subject to measurement error and may fluctuate from year to year even when the true median income for a given area is unchanged. The limits on increases and decreases ensure that outlier estimates of area median family income changes do not cause undue administrative burden or negatively impact program participants through wildly fluctuating income limit levels.

Second, several programs, most notably the Low-Income Housing Tax Credit (LIHTC), use Section 8 income limits to determine eligibility and rent levels for low-income households. By limiting decreases in income limits to no more than 5 percent, HUD helps ensure the financial viability of affordable housing properties.[3] By limiting increases in income limits, HUD decreases the burden on low-income households who may face large rent increases resulting from higher income limits.

II. Determination of the Limit (Cap) on Annual Income Limit Increases

This notice announces a change to the FY 2010 criteria for determining the maximum possible increase in income limits. For FY 2024 income limits and thereafter, HUD intends to set the maximum possible increase in income limits at the higher of five percent or twice the change in national median family income, with an absolute cap of ten percent. HUD believes that this adjustment to the current methodology will align the cap rule with its intended purpose in high income-growth periods. In such periods, doubling the year-to-year change in national median

[3] Effective income limits for properties financed with Low Income Housing Tax Credits may not decrease once the properties are placed in service. However, the viability of future properties and properties under development may suffer if the income limit decreases before the property is placed in service.

family income produces a cap that is significantly higher than the upper range of income growth experienced by areas while limiting the possibility of overly burdensome rent increases for LIHTC tenants.

Additionally, HUD is formally establishing the definition of “national median family income” used in the calculation of the cap in income limit increases. From FY 2010 to FY 2014 HUD used an estimate of national median family income based on the ACS estimate of national family income adjusted in part with an inflation adjustment and in part on historical trends in national median family income. From FY 2015 to FY 2021 HUD used estimates of ACS national median income adjusted with actual and forecast inflation alone. For FY 2022 and FY 2023, HUD used unadjusted estimates of national median family income from the ACS.

For FY 2024 and thereafter, HUD intends to continue calculating the cap on income limit increases using the most recent unadjusted estimates of median family income provided by the Census Bureau via the ACS. Therefore, for FY 2024 income limits, the cap would be based on the change in national median family income from ACS 2021 to ACS 2022 (see the discussion below regarding HUD’s income limit release schedule). By continuing to remove inflation adjustments from its cap calculation, HUD is keeping the calculation in line with its purpose of capturing trends in median family income data addressing survey volatility rather than volatility introduced by accelerating or decelerating inflation.

III. ACS Basis for Median Family Incomes and Income Limits Release Schedule

HUD released FY 2023 income limits on May 15, 2023. HUD would ordinarily have based the 2023 income limits on ACS 2020 data. However, the Census Bureau did not release normal ACS 2020 one-year data as a result of difficulties with the ACS data collection during the COVID-19 pandemic. Therefore, HUD elected to “skip” 2020 and instead base the FY 2023 income limits on ACS 2021 data. HUD intends to preserve this two-year gap between the vintage of the ACS data and the fiscal year for which the income limits are published. FY 2024 income limits will therefore be based on ACS 2022 data. An exception to this practice may occur in years in which the ACS implements new metropolitan statistical area definitions that HUD has not yet captured in its Fair Market Rent calculations. HUD believes it can implement this two-year gap and still release income limits on or around April 1 of each year.

IV. Request for Comments

While HUD invites comments on any aspect of this notice, HUD is particularly interested in receiving comments in response to the following specific questions:

Question for comment #1: Is a cap of ten percent appropriate for HUD's income limit calculation methodology? If not, is there an alternative cap that would be more appropriate? Would such a cap harm planned or in development LIHTC-financed properties (i.e., do such properties assume rent growth in excess of 10 percent)?

Question for comment #2: In updating its income limits each year, HUD's goal is to allow income limits to rise with prevailing income growth, thus allowing similar numbers of households to be eligible for assistance each year. Many HUD eligible households receive fixed incomes. A number of fixed income programs, such as social security and veteran disability benefits, are adjusted for inflation in a different way than HUD income limits. Have income limits kept pace in your community with other social programs that provide basic income for individuals and households who would also need housing assistance such as elderly, disabled, and homeless veterans? That is, are individuals or families that would have been eligible in previous years now no longer eligible because income limits have not kept pace in your area? Or are more eligible than had been the case previously?

Question for comment #3: In its calculation of income limits, HUD may adjust income limits away from the legislatively defined percentages of Area Median Family Income for places with high and low housing costs relative to Area Median Family Income, or where incomes are otherwise unusually high or low. Currently, beyond the limit on increases and decreases discussed in this notice, HUD also implements high- and low-housing cost adjustments and sets a floor for each State based on the State non-metropolitan median family income (for more information on the current methodology, see https://www.huduser.gov/portal/datasets/il//il23/IncomeLimitsMethodology-FY23.pdf as well as HUD's online individual area income limit documentation tool available at https://www.huduser.gov/portal/datasets/il.html#query_2023). What other criteria, if any, should HUD use when considering whether to make such adjustments in addition to those in existing policy? For example, should there be a national minimum income limit to reflect a minimum rent needed to operate and maintain rental housing in the lowest cost housing markets? Should the same criteria be used in United States territories?

Question for comment #4: HUD recognizes the tension inherent in the use of an income-based measurement for setting rents, where the costs of operating affordable housing rental properties may grow faster or slower than prevailing incomes, due to a number of factors including, for example, recent rises in insurance costs. For LIHTC property owners, in the past have you raised your rents in LIHTC units to the maximum allowable year-over-year increases? For purposes of HUD better understanding the context of your answers, please indicate the location of the property (e.g., ZIP code, city, or county) to which the answer applies.

- If yes, why have you done so, and have the increases been adequate to operate and maintain your property?
- In the years where you raised rents to the maximum allowable amount, did you see any changes in the turnover of your units as compared with turnover in years when you did not raise rents to the maximum allowable amount?
- If no, what factors do you use in determining how much you raise your rents? In what years have HUD income limit changes been adequate for a LIHTC property to keep up with operating and maintenance costs, and in what years has it not been adequate?

Question for comment #5: Should income limits consider direct measures of costs, such as wages or insurance, instead of, or in addition to, its high housing cost adjustment, recognizing that

HUD may currently lack the statutory authority to do so? If so, which specific costs should HUD consider, and which measurements or data would you recommend as a reference?

Question for comment #6: Does HUD's income limits methodology help or hinder the use of Housing Choice Vouchers in LIHTC-financed properties? To what extent does this impact vary for places with high and low housing costs?

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